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Supreme Court, U.S.
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No. (1)

In the Supreme Court of the United States

LEONARD W. KROUNER,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

On Petition for a Writ of Certiorari to the Florida Supreme Court

PETITION FOR WRIT OF CERTIORARI

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September 17, 2007

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QUESTIONS PRESENTED

I.

Did the Florida Supreme Court violate the United States Constitution Article IV, § 2, cl. 1 privileges and immunities protection of petitioner and other nonresident Florida bar members by making "home state" bar readmission a condition of Florida bar readmission after disbarment thereby lengthening the period of disbarment for petitioner and other nonresident Florida bar members beyond that resident Florida bar members would suffer for similar misconduct?

II.

Did the Florida Supreme Court violate the United States Constitution Amendment 5 and 14 due process rights of petitioner and other nonresident Florida bar members by adopting the disbarment order of a state such as New York imposed without notice of charges or hearing under New York Judiciary Law § 90 automatically upon commission of a felony when Florida attorney discipline procedure in the *Rules Regulating the Florida Bar*, Rule 3.7-6, provides for notice and hearing to determine sanction after commission of a felony?

III.

Did the Florida Supreme Court violate the United States Constitution Amendment 6 right of petitioner and other Florida bar members convicted of a felony not to suffer punishment in addition to that recommended by the trier of fact unless additional aggravating facts are found recognized in *Ring v. Arizona*, 536 U.S. 584, 588-599, 602 (2002); *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Blakely v.*

Washington, 542 U.S. 296 (2004); *United States v. Booker,* 543 U.S.220 (2005); and, *Cunningham v. California,* ___ U.S.____, 2007 Lexis 1324 (No.05-6551) (2007), when it increased the length of petitioner's disbarment beyond that recommended by the Florida Bar Referee without finding any additional aggravating facts not found by the Referee?

IV.

Did the Florida Supreme Court violate the petitioner's United States Constitution Amendment 5 and 14 due process right to notice of charges in an attorney disciplinary proceeding recognized in *In re Ruffalo,* 390 U.S. 544 at 550 (1968), by approving the Florida Referee's disbarment of petitioner for an "... attempted misrepresentation to either the [New York Supreme Court Albany County] sentencing court or to this referee..."(App. D, p.18a) **which attempted misrepresentation was not charged** in the Florida Bar Complaint against petitioner docketed May 11, 2004 initiating the Florida attorney disciplinary process ?

V.

Did the Florida Supreme Court violate the petitioner's United States Constitution Amendment 5 and 14 due process rights by making "home state" bar readmission a condition of Florida bar readmission without defining "home state" which is not otherwise defined in Florida statutes, regulations, and cases, where petitioner was first admitted to law practice in New York but is currently domiciled in California ?

RULE 14.1(b) STATEMENT

The parties to this proceeding in the Florida Supreme Court are:

Respondent: Leonard W. Krouner

Complainant: The Florida Bar

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PETITION FOR A WRIT OF CERTIORARI

Leonard W. Krouner ("Petitioner") respectfully petitions for a writ of certiorari to review an order of the Florida Supreme Court.

OPINIONS BELOW

Upon information and belief the Florida Supreme Court docket reporting opinions and orders entered in this case required by Supreme Court Rule 14(d) can be found on the Florida Supreme Court website, http://www.floridasupreme court.org/, under *The Florida Bar v. Leonard William Krouner* (Case Nos. SC03-1644 and SC04-819).

Upon information and belief the Florida Supreme Court disposition order dated June 19, 2007 denying petitioner's motion for rehearing on the merits has not been assigned official citation and is reproduced in Appendix A ("App. A"), p.1a.

Upon information and belief the Florida Supreme Court disposition order dated March 21, 2007 has not yet received an official citation and is reproduced in Appendix B ("App. B"), p.3a.

Upon information and belief the Amended Report of the Referee assigned by the Florida Supreme Court filed on March 28, 2005 is unreported and is reproduced in Appendix D ("App. D"), p.7a.

Upon information and belief the Florida Supreme Court order dated March 1, 2004 making petitioner's license suspension effective nunc pro tunc to May 12, 2003 is unreported and reproduced in Appendix C ("App. C"), p.5a.

JURISDICTION

The Florida Supreme Court disposition order to be reviewed is dated March 21, 2007, and the Florida Supreme Court disposition order denying petitioner's motion for rehearing on the merits is dated June 19, 2007. This petition is timely under 28 U.S.C. § 2101(c), and Supreme Court Rule 13(1) and (3) because it is being filed within 90 days from the Florida Supreme Court order denying rehearing on the merits dated June 19,2007.

The Supreme Court has jurisdiction to review state high court judgments or decrees under 28 U.S.C. § 1257(a) and (b), and U.S. Constitution Article III, § 2, cl. 2. *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat. 304, 324-325, 343-344, 4 L.Ed. 97 (1816)).

The Supreme Court has jurisdiction to consider whether the Florida attorney disciplinary process and Florida Supreme Court orders violate the U.S. Constitution and U.S. Statutes.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Article III, § 2 , cl. 2 judicial power; Article IV, § 2, cl. 1 and Amendment 14, § 1 privileges and immunities; Article VI, cl. 2 supremacy; Amendment 14 and Amendment 1 requiring state action not to infringe freedom of speech, association, and the right to petition government for redress of grievances; Amendment 14, § 1 and Amendment 5 preventing states from depriving any person of life, liberty, or property without due process of law; Amendment 14, § 1 and Amendment 6 requiring states not to limit effective assistance of counsel by ordering punishment for advancing authoritative legal positions in good

faith, and requiring that punishment enhancement be supported by finding aggravating facts in addition to those upon which the original punishment was determined.

The Americans With Disabilities Act, 42 U.S.C. §12131 *et seq.*, prohibiting discrimination by public entities against persons with disabilities.

The above described United States Constitution and Statutory provisions are reproduced in Appendix E ("App. E"), p.22a.

STATEMENT OF THE CASE

On May 12, 2003 Petitioner pled guilty in New York Supreme Court Albany County to three felonies for improper receipt of private disability insurance benefits from October 2000 to October 2001("disability benefit period").

Consent to Florida disbarment was not a condition of the criminal sentence imposed by New York Supreme Court Albany County, or a condition of petitioner's plea agreement as established by the New York sentencing judge's statements, the New York Supreme Court Albany County sentencing order, and sworn statements from petitioner's New York attorney and petitioner introduced in evidence at the March 2005 hearing before Florida Referee (Hon. George Reynolds) who the Florida Supreme Court appointed to hear and recommend sanction in this case. Petitioner's consent to suspension of his Florida bar license in 2003 as represented to the New York Supreme Court Albany County prior to sentencing is confirmed in the Florida Supreme Court order dated March 1, 2004 in App. C, p.5a.

Unopposed evidence and legal authority supporting petitioner's position that petitioner agreed to inform Florida Bar authorities of the New York conviction and consent to Florida Bar license suspension were not mentioned in the Florida Supreme Court disbarment order – reproduced in App. B, p.3a – which approved the Referee's recommendation that petitioner be disbarred for not consenting to Florida disbarment. Evidence of factors mitigating and aggravating sanction in the *Florida Standards for Imposing Lawyer Sanctions* 9.22 and 9.23 – which the Florida Referee's Amended Report found to support suspension in the absence of petitioner's license surrender statement to the New York Supreme Court Albany County, App. D, pp.15a, 16a – were not weighed by the Florida Supreme Court in determining the disbarment sanction. App. B, p.3a. After surrendering his Florida bar license by consenting to its suspension in the Florida attorney discipline proceeding, petitioner participated in the disciplinary proceeding to mitigate sanction as authorized by the *Rules Regulating the Florida Bar*. The Referee's Amended Report, App. D, pp.12a-15a, held that law license surrender by consent to suspension was not the surrender contemplated in the New York criminal proceeding. Evidence supporting petitioner's position that the New York plea agreement did not require consent to Florida disbarment including sworn statements from petitioner, petitioner's New York attorney, the New York sentencing judge's statements, and the New York sentencing order was not mentioned in the Referee's Amended Report, App. D, p.7a, *et seq.*, or Florida Supreme Court disbarment order, App. B, p.3a.

Surrender definitions from dictionaries offered by Florida Bar Counsel and attorney license cases from Florida and other jurisdictions offered by petitioner supporting petitioner's position were not mentioned in the Florida Supreme Court

disbarment order, App. B, p.3a, or in the Amended Referee's Report, App. D, p.7a, *et seq.*

During oral argument Florida Supreme Court Chief Justice Lewis *sua sponte* asked petitioner and Florida Bar Counsel for any authority contrary to holding that readmission to the bar in the disbarred attorney's "home state" be required for readmission to Florida. Petitioner pointed to *Selling v. Radford*, 243 U.S. 46, 51 (1917), urging that the Florida Supreme Court not make readmission to the Florida bar dependent upon readmission to New York bar because New York Judiciary Law § 90 automatic disbarment without notice or hearing does not satisfy minimum due process requirements under the United States or Florida Constitutions, and that disbarment is too harsh a sanction for illness-induced misconducted and a "gross injustice." Petitioner also pointed to the Referee's recommendation at the March 3, 2005 hearing **not to make** New York bar readmission a condition of Florida bar readmission because to do so would be a **"permanent practical disbarment" considering petitioner's age and health**, *infra*, pp.8, 9, that New York's disbarment is a minimum of seven years while Florida's is a minimum of five years, and that Florida has a presumption against readmitting disbarred attorneys, all of which make Florida's disbarment for illness induced misconduct a "gross injustice" under *Selling v. Radford, id.*, and discrimination against nonresident Florida bar members in violation of the U.S. Constitution Article IV § 2, cl. 1 privileges and immunities clause. The Florida Supreme Court order of permanent practical disbarment addressed no issue raised by petitioner in response to Chief Justice Lewis inquiry during oral argument, and no issue raised by Chief Justice Lewis concerning whether conditioning readmission to the Florida Bar after disbarment on readmission to the disbarred attorney's "home state" is consistent with prevailing authority. The Florida

Supreme Court's March 20, 2007 disbarment order and June 19,2007 order denying rehearing not defining "home state" – which is **not** otherwise defined in Florida statutes, regulations, or cases – leaves petitioner, who was originally admitted to law practice in New York but is now domiciled in California, and the public with no definition of "home state" essential to determine when an application for readmission to the Florida bar can be filed.

The Florida Supreme Court denied petitioner's motion on timely notice to Florida Bar counsel under Florida Statutes § 90.202 and § 90.203, App. E, pp. 32a-33a, to consider and/or to take *compulsory judicial notice* of two Florida Supreme Court cases which conflict with the rule that Florida bar readmission be conditioned upon "home state" bar readmission – *Florida Bar v. Karahalis*, 780 So.2d 27 (Fla. 2001) ("*Karahalis*") and *Florida Bar v. Wilkes*, 179 So.2d 193 (Fla. 1965) ("Wilkes"). *Wilkes* and *Karahalis* hold that Florida will not automatically adopt a sister state attorney sanction, and will not adopt a sister state sanction which does not satisfy the *Selling v. Radford*, *id.*, criteria for federal court adoption of a state court sanction. Petitioner urged the Florida Supreme Court to consider that New York's Judiciary Law § 90 automatic disbarment statute – which has been held due process deficient by the Eighth, Ninth, and District of Columbia Circuits, *infra*, pp.21, 22 – renders New York's disbarment of petitioner a legal nullity in Florida under *Florida Bar v. Karahalis*, 780 So.2d 27 (Fla. 2001). The Florida Supreme Court refusing to apply *Karahalis*, *id.*, results in Florida adopting the New York Judiciary Law §90 due process deficient disbarment by disbarring petitioner in Florida until petitioner is readmitted in New York. By adopting the due process deficient New York disbarment order the Florida Supreme Court disbarment order violates petitioner's right under Florida law to have attorney discipline

determined after notice of charge in a Constitutionally due process sufficient hearing.

The Florida Supreme Court did not recognize, apply, discuss, or distinguish its *Karahalis*, *id.*, and *Wilkes*, *id.*, cases because they opposed the rule that a disbarred nonresident Florida bar member cannot apply for readmission to the Florida bar until he is readmitted in his "home state." Florida's disregard of *stare decisis*, uncontroverted evidence, and legal authority in this case is unprecedented.

Florida's disbarment of petitioner starting three years and ten months after petitioner's New York felony conviction – the disbarment date recommended by the Florida Referee – and continuing until after petitioner is readmitted in his "home state" – contrary to the Florida Referee's recommendation – for a nonexistent "attempted misrepresentation" arising from participation in the Florida attorney disciplinary process to mitigate sanction under the *Rules Regulating the Florida Bar* – which was not charged in the Florida Bar disciplinary complaint – violated petitioner's Constitutional due process right to notice of charges, Constitutional free speech right to assert defenses in an official proceeding effecting property and reputation interests, Constitutional effective assistance of counsel right to advocate for a legally authorized result by introducing evidence and legal authority, and Constitutional right not to suffer harsher punishment than determined by the *nisi prius* trier of fact unless additional aggravating facts are found.

Allowing the Florida disbarment order to stand without review would condone absence of due process in state attorney discipline proceedings – an unacceptable Constitutional violation – requiring review by this Court.

A. Without Finding Any Additional Aggravating Facts Not Found by the Referee the Florida Supreme Court's "Permanent Practical Disbarment" of Petitioner Starts the Disbarment Period Three Years and Ten Months after the Date Recommended by the Referee and Requires Readmission in New York as a Condition of Readmission in Florida Which Sanction Was Rejected by the Referee

By order dated **and effective March 21, 2007,** App. B, p.3a, the Florida Supreme Court disbarred petitioner, a nonresident member of the Florida Bar since 1973. The Florida Supreme Court March 21, 2007 order relied upon *Florida Bar v. Untracht*, 923 So.2d 457 (Fla. 2006) ("*Untracht*") and *Florida Bar v. Sanders*, 580 So.2d 594 (Fla. 1991) ("*Sanders*") saying "... attorney disbarred in his home state will not be allowed to practice in Florida until readmitted in his home state." The Florida Supreme Court order dated March 21, 2007 also said "the report of the referee is **approved** and Leonard William Krouner is disbarred." App. B, p.3a.

At the March 3, 2005 hearing Referee Reynolds said (page 83, line 24 to page 84, line 2 of the hearing transcript from the March 3, 2005 hearing before Referee George Reynolds):

> My recommendation to the court [Florida Supreme Court] would be to leave out the New York requirement [readmission to the New York bar as a requirement of readmission to the Florida bar],

> **because it is seven years, and at his age of practice, it becomes a practical [permanent] disbarment.**

[emphasis added].

The Florida Supreme Court **rejected** the sanction recommended in the Referee's Report it said it **approved** by (1) **starting** the Florida disbarment period on **March 21,2007 – three years and ten months later than the May 21,2003 date recommended by the Referee** – and (2) requiring readmission to the petitioner's "home state" bar as a condition of readmission to Florida **contrary to the Referee's recommendation** thereby making the Florida minimum disbarment period indefinite and longer than petitioner's New York and District of Columbia minimum disbarment periods. In Florida – unlike New York– *Rules Regulating the Florida Bar*, Rule 3-7.7(f), and the Florida Bar Standard 2.2(1) and (2) [found at "http://www.floridabar.org" under "lawyer regulation"]– a disbarred attorney must pass the Florida bar examination and a character screening process with a presumption against readmission to be readmitted. The Florida Supreme Court disbarment order made no findings of fact not made in Referee's Amended Report to support the harsher sanction rejected by the Referee.

The Florida Supreme Court disbarment order is silent on why it imposed the sanction rejected in the Referee's Report which it **purportedly approved.**

B. Florida Disbarred Petitioner for Seeking License Suspension in the Florida Disciplinary Proceeding Which it Held to Be an Attempted Misrepresentation Based upon Petitioner's Comments Prior to the New York Sentencing. Attempted Misrepresentation Based upon Presentence Comments in New York Was Not Charged as Misconduct in the Florida Disciplinary Complaint. Petitioner Attempted No Misrepresentation by Participating in the Florida Attorney Disciplinary Process after Consenting to Suspension of His Florida Bar License.

The Amended Referee's Report found, in part:

> This respondent presented compelling mitigating evidence relating to his psychological state of mind at the time of the commission of the felonies. But for respondent's multiple statements to the sentencing court that he would surrender or sacrifice his three licenses to practice law, the referee might have found that Krouner had overcome the presumption of disbarment.

App. D, p.16a.

The record and legal authority does not support the Referee's and the Florida Supreme Court's conclusion that petitioner's license surrender could only be accomplished by consent to disbarment. Petitioner and his New York criminal defense attorney provided sworn statements during the Florida disciplinary hearing on March 3, 2005 that petitioner agreed to notify Florida of the New York conviction but did not consent to Florida disbarment in the New York criminal proceeding. There was no contrary proof. Florida attorney

discipline and Florida license cases offered by petitioner in which license surrender was accomplished by license suspension were not mentioned in the Florida disbarment order. The New York sentencing judge's statement that the sentence was based only upon the amount of insurance benefits received offered by petitioner was not mentioned in the Florida disbarment order. The Florida disbarment order was silent on what the Amended Referee's Report said was the outcome determinative issue of whether petitioner's consent to suspension of his Florida license was a license surrender as a matter of law. The Florida Supreme Court permanently, practically disbarred petitioner for an "attempted misrepresentation" which did not occur by not mentioning evidence and legal authority establishing petitioner's consent to Florida bar license suspension in 2003 was a legal surrender of that license, and the surrender petitioner spoke of in his pre-sentence comments to the New York Supreme Court Albany County justice.

Constitutional due process requirements for attorney discipline cannot be different in each of the 50 states and in each federal court. Minimum Constitutional due process procedures should be required for attorney discipline proceedings conducted in any American jurisdiction. *U.S. v. Kras*, 409 U.S. 434 (1973), *Selling v. Radford*, 243 U.S. 46, 48 (1917).

C. The Florida Supreme Court Disbarment Order Did Not Mention or Apply the *Selling V. Radford*, 243 U.S. 46, 48 (1917), Criteria Adopted in *Florida Bar v. Karahalis,* 780 So.2d 27 (Fla. 2001) When Making Readmission to Petitioner's "Home State" a Requirement of Readmission to the Florida Bar Regardless of Whether the Home State Procedure for Determining Disbarment Was Due Process Deficient or the Home State Sanction Was a "Gross Injustice" as Punishment for Illness-Induced Misconduct.

During oral argument on November 1, 2006 Florida Supreme Court Chief Justice Fred Lewis *sua sponte* asked petitioner and prosecuting Florida Bar Counsel to provide legal authority bearing upon whether a disbarred attorney's readmission to the Florida bar should be conditioned upon readmission to the bar in the attorney's "home state" as that Court held in *Florida Bar v. Untracht*, 923 So.2d 457 (Fla. 2006) ("*Untracht*") and *Florida Bar v. Sanders*, 580 So.2d 594 (Fla. 1991) ("*Sanders*"). Since Referee Reynolds Amended Report did **not** recommend making readmission to petitioner's "home state" bar a condition of readmission to the Florida Bar, and "home state" bar readmission is not a requirement for readmission to the Florida bar under Florida statutes or regulations, the petitioner had no notice that the New York bar readmission would be an issue in the Florida Supreme Court.

In response to Chief Justice Lewis inquiry concerning the "home state" readmission requirement Petitioner moved the Florida Supreme Court to take compulsory judicial notice under Florida Statutes § 90.202 and § 90.203 of (1) *Florida Bar v. Karahalis,* 780 So.2d 27 (Fla. 2001) which holds that Florida applies the criteria identified in *Selling v. Radford,*

243 U.S. 46, 51 (1917), in determining whether the disciplinary sanction rendered against a Florida Bar member by a sister state will be binding on Florida (2) *Florida Bar v. Wilkes,* 179 So. 2d 193 (Fla. 1965), which holds that Florida does not automatically disbar a Florida bar member disbarred in another state (3) *In re Ruffalo*, 390 U.S. 544, 551 (1968), which holds that failure to provide notice of misconduct upon which attorney discipline is based violates the due process rights of a respondent in an attorney discipline proceeding, and (4) *Selling v. Radford*, 243 U.S. 46, 51 (1917), which holds that a federal court will not adopt the sanction ordered by a state court in an attorney disciplinary proceeding where the state court did not accord the respondent due process, or where adoption of the sanction ordered by the state court would result in a gross injustice. The Florida Supreme Court denied the petitioner's motion to take compulsory judicial notice of U.S. Supreme Court and Florida Supreme Court cases and entered the permanent practical disbarment order on March 21, 2007 with no recognition or discussion of *Karahalis, supra, Wilkes, supra, In Re Ruffalo, supra,* or *Selling v. Radford, supra.*

REASONS FOR GRANTING PETITION

The lower court ruling is certiorari worthy under U.S. Supreme Court Rules 10(a) and (c) since it conflicts with "relevant decisions of this Court"; is one of the conflicting decisions in Florida and among state and federal Circuit courts concerning whether due process is required in felony attorney discipline matters; and involves Constitutional issues of national concern including whether imposition of harsher punishment in attorney discipline matters based upon residency violates the U.S. Constitution privileges and immunities and equal protection provisions, and whether a state *(i.e.,* Florida) which provides for notice of charges, a

hearing, and *Standards* for determining sanction in felony attorney discipline matters violates due process guarantees in the U.S. Constitution and its own Constitution by adopting the disbarment order of a state which is a "gross injustice" as punishment for illness induced misconduct, and due process deficient as rendered without notice of charges or hearing.

I. RESIDENCE IS A CONSTITUTIONALLY IMPERMISSIBLE BASIS UPON WHICH TO INCREASE PUNISHMENT IN ATTORNEY DISCIPLINE PROCEEDINGS. FLORIDA'S HOME STATE BAR READMISSION RULE VIOLATES U.S. CONSTITUTION ARTICLE IV, § 2, Cl. 1 PRIVILEGES AND IMMUNITIES BY MAKING THE DISBARMENT PERIOD FOR NONRESIDENT FLORIDA BAR MEMBERS LONGER THAN RESIDENT FLORIDA BAR MEMBERS FOR THE SAME MISCONDUCT AS IT WILL DO FOR PETITIONER BEYOND THAT WHICH RESIDENT FLORIDA BAR MEMBERS WOULD SUFFER FOR THE SAME MISCONDUCT UNLESS THE FLORIDA DISBARMENT ORDER IN THIS CASE IS REVERSED

Florida's rule that a nonresident disbarred Florida attorney cannot be readmitted to the Florida bar until readmitted to the bar in the attorney's "home state" ("readmission rule") is Constitutionally impermissible.

Florida rejected the rationale that allowing attorneys disbarred in another state to practice in Florida would make Florida a haven for disbarred attorneys or that "full faith and credit" required automatic acceptance of a sister jurisdiction attorney sanction by Florida in *Florida Bar v. Wilkes*, 179 So.2d 193 (Fla. 1965).

Florida's readmission rule lengthens the period of disbarment only for nonresident Florida bar members thereby discriminating on the basis of residency in violation of the privileges and immunities clause in United States Constitution Article IV, § 2 and Amendment 14, § 1, and in violation of Amendment 5 due process equal protection clause. An attorney cannot be excluded from law practice solely on the basis of residency. *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985). An attorney should not be disbarred from law practice for a longer period of time in an attorney disciplinary proceeding solely on the basis of residency. Petitioner will be disbarred in Florida for a longer period than a resident Florida bar member guilty of identical misconduct based upon petitioner's status as a nonresident Florida bar member unless the disbarment order is reversed.

II. THE RULING BELOW CONFLICTS WITH SUPREME COURT RULINGS WHICH PROHIBIT SANCTIONING AN ATTORNEY FOR UNCHARGED MISCONDUCT, GIVING LEGAL EFFECT TO ANOTHER JURISDICTION'S SANCTION ORDER WHICH IS A "GROSS INJUSTICE" AS PUNISHMENT FOR ILLNESS-INDUCED MISCONDUCT AND RENDERED WITHOUT NOTICE OF CHARGES AND A HEARING, AND INCREASING THE SEVERITY OF PUNISHMENT IN A QUASI-CRIMINAL PROCEEDING WITHOUT FINDING ADDITIONAL FACTS NOT FOUND BY THE *NISI PRIUS* FACT FINDER

A. Florida Depriving Petitioner of Property and Reputation By Disbarment for Uncharged Misconduct Conflicts With U.S. Supreme Court Decisions

The Florida Bar complaint initiating this attorney discipline proceeding **did not charge petitioner with attempted misrepresentation** to the New York Supreme Court Albany County or the Referee appointed by the Florida Supreme Court for participating in the Florida attorney disciplinary process after petitioner surrendered and sacrificed his Florida bar license by consenting to license suspension as acknowledged by the Florida Supreme Court order dated March 1, 2004 (App. C, p.5a). Nevertheless, the Florida Supreme Court "approved" the Amended Report of the Florida Bar referee which disbarred petitioner for "... attempted misrepresentation to either the [New York Supreme Court Albany County] sentencing court or to this referee..." (App. D, pp.16a, 18a).

The Amended Report of the Florida Referee identified the issue on appeal of the Amended Referee's Report to be one of law, to wit - whether petitioner's litigating to mitigate sanction after consenting to Florida bar license suspension in 2003 was an "attempted misrepresentation" to the New York sentencing court or the Referee. (App. D, p.16a.) During oral argument the Florida Supreme Court *sua sponte* raised the issue of the duration of petitioner's Florida disbarment under its holdings in *Sanders*, *supra,* and *Untracht*, *supra*. It then disbarred petitioner without mentioning its holdings in *Karahalis*, *supra,* and *Wilkes*, *supra*–which conflicted with *Sanders*, *supra*, and *Untracht*, *supra*–or this Court's holding in *Selling v. Radford*, *supra*, which the Florida Supreme Court adopted in *Karahalis*, *supra*.

In Re Ruffalo, 390 U.S. 544, 551-552 (1968), holds that attorney disciplinary matters are "... adversary proceeding proceedings of a quasi criminal nature. *Cf. In re Gault*, 387 U.S. 1, 33. The charge must be known before the proceedings commence." *Also see*, *Wisconsin v. Constantineau*, 400 U.S. 433 at 437 (1971), which held: "Where a person's good name, reputation, honor, or integrity is a stake because of what the government is doing to him, notice and an opportunity to be heard are essential." The Florida Supreme Court violated petitioner's fundamental Constitutional due process right to notice of the charge by disbarring petitioner for uncharged conduct (*i.e.*, "attempted misrepresentation" during the attorney discipline process) in violation of the Supreme Court holding in *In Re Ruffalo*, *id.*

Fundamental Constitutional rights have a single meaning which state judges are bound to respect and enforce whether what is involved is one of the Bill of Rights applicable to the states, *Malloy v. Hogan*, 378 U.S. 1 (1994), or a general guarantee such as due process, *U.S. v. Kras*, 409 U.S. 434

(1973). Florida's disbarment order based upon an uncharged "attempted misrepresentation" in the attorney disciplinary process violated petitioner's fundamental due process right to notice of the charges against him and should be reversed.

B. Florida's Giving Legal Effect to New York's Disbarment Order Which Is a "Gross Injustice" as Punishment for Illness-Induced Misconduct and Rendered Without Notice of Charges or a Hearing Conflicts with United States Supreme Court and Florida Supreme Court Cases

Petitioner was automatically disbarred in New York in May 2003 under New York Judiciary Law § 90 without notice or hearing. New York's Judiciary Law § 90 automatic disbarment rule has been held Constitutionally due process deficient in *In re Thies*, 662 F.2d 771,773 -774, n(12) (D.C. Cir. 1980); *In re Steven Kramer*, 282 F.2d 721,722-723 (9th Cir. 2002); *Rosenthal v. Justices of the Supreme Court of California*, 910 F.2d 561, 564 (9th Cir.1990); and *Matter of Jones*, 506 F.2d 527,528-529 (8th Cir. 1974). If New York is petitioner's "home state", Florida violated petitioner's rights under Florida law by adopting the New York automatic disbarment order rendered without due process notice or hearing when it made New York ("home state"?) bar readmission a condition of readmission to Florida bar after disbarment.

Unlike New York Judiciary Law § 90(4)(a), (b), App. E, p.39a, the *Rules Regulating the Florida Bar*, Rule 3-7.6(b), (h)(1)(A), (h)(5)(A), App. E, pp.26a-28a provide for a Florida bar member to receive notice and hearing prior to determination of sanction in an attorney discipline proceeding based upon a felony conviction. Unlike New York Judiciary

Law § 90, the Florida Standards for Imposing Lawyer Discipline,. App. E, pp. 34a-38a, provide criteria for determining sanction in an attorney discipline case following a felony conviction. Unlike New York, a Florida attorney has the right to submit mitigating evidence to overcome the presumption of disbarment in an attorney discipline case following a felony conviction under *Florida Bar v. Jahn*, 509 So.2d 285 (Fla. 1987).

Since Florida provides due process where New York does not, Florida's incorporating New York's disbarment order rendered in a due process deficient proceeding in the Florida disbarment order is the same as Florida's disbarring petitioner without due process in violation of the U.S. and Florida Constitutions. Following the Florida *Karahalis*, *id.*, case which adopted the criteria in *Selling v. Radford*, *supra*, for determining whether Florida will recognize a sister state attorney sanction would have prevented Florida from recognizing the New York disbarment order in this case as rendered without due process notice or hearing, and as imposing the maximum penalty of disbarment for what the Florida Referee found to be illness-induced misconduct – a "gross injustice" under *Selling v. Radford*, *supra*. However, the Florida Supreme Court refused to recognize or apply its decisions in *Karahalis*, *supra*, or *Wilkes*, *supra*, by including the due process deficient and "gross injustice" New York disbarment order in the Florida disbarment order. Florida violated petitioner's property and due process rights by increasing the minimum length of petitioner's Florida disbarment to be longer than the minimum length of the due process deficient, "gross injustice" New York disbarment. Neither Florida nor any state can be allowed to avoid due process requirements in a license proceeding by adopting a "gross injustice" sanction rendered without due process from another state. Not correcting such a transgression can obviate

Constitutional protections. Interpreting and upholding the Constitution is one of this Court's core judicial responsibilities. Florida's violating Constitutional rights by adopting a "gross injustice" sanction order from a state made without due process presents an issue of national concern meriting review by this Court.

C. The Florida Supreme Court's Imposing a Harsher Punishment than Recommended by the Referee Without Finding Additional Aggravating Facts Violates Petitioner's Sixth Amendment Right Recognized in *United States v. Booker*, 543 U.S. 220 (2005) ("*Booker*")

As previously noted in *Ruffalo* and *Gault*, *supra*, p.17, this Court holds an attorney disciplinary proceeding is quasi criminal in nature requiring due process notice and hearing before imposing a sanction effecting property and reputation interests.

In Florida the Referee takes on the criminal jury function of determining sanction similar to the sentence in a criminal proceeding, and the Florida Supreme Court reviews and finalizes the sanction taking on the role of the criminal trial judge.

The Florida Supreme Court enhanced the sanction recommended in the Amended Referee's Report by increasing the length of disbarment. Florida law provides that sanction in attorney discipline proceedings be determined under the *Florida Bar Standards for Imposing Lawyer Sanctions* ("*Florida Bar Standards*") which involves finding facts to support the sanction. In *Ring v. Arizona*, 536 U.S. 584, 588-589, 602 (2002) this Court said " If a State makes an increase in the defendant's authorized punishment contingent on the

finding of a fact, that fact - no matter how the State labels it - must be found by a jury beyond a reasonable doubt."

Here the Referee recommended a five year disbarment period starting on May 12, 2003, App. E, p.14a, and the Florida Supreme Court imposed a period of disbarment starting on March 20, 2007 which can go on indefinitely if petitioner is not readmitted to his "home state" which the disbarment order did not define, App. B, p.3a. The Florida Supreme Court found no additional aggravating fact to support the enhanced sanction although Florida law provides that sanction in an attorney discipline proceeding be determined by applying the *Florida Bar Standards for Imposing Lawyer Sanctions* to facts. The Florida Supreme Court's lengthening the petitioner's disbarment without finding any additional aggravating fact violates petitioner's Sixth Amendment right to have the trier of fact determine "any particular fact" the law makes essential to punishment recognized in *Booker, id.*

III. UNIFORM CONSTITUTIONAL DUE PROCESS PROCEDURES ARE NEEDED TO RESOLVE CONFLICTS AMONG STATE AND AMONG FEDERAL COURTS CONCERNING REQUIRED DUE PROCESS PROCEDURES IN FELONY ATTORNEY DISCIPLINARY CASES

States and federal circuit courts conflict on whether notice and hearing are required in attorney discipline proceedings following felony convictions. The Second Circuit holds that the New York Judiciary Law § 90 automatic disbarment upon commission of a felony without notice or hearing is constitutional. *In Re Tidwell v. Grievance Committee, et. al.*, 295 F.3d 331 (2d Cir. 2002).

The Eighth, Ninth, and District of Columbia Circuits hold that the absence of notice and hearing in New York Judiciary Law § 90's automatic disbarment of an attorney for a felony conviction violates due process and is unconstitutional. *In re Thies*, 662 F.2d 771,773 -774, n(12) (D. C. Cir. 1980); *In re Steven Kramer*, 282 F.2d 721,722-723 (9th Cir. 2002); *Rosenthal v. Justices of the Supreme Court of California*, 910 F.2d 561, 564 (9th Cir.1990); and *Matter of Jones*, 506 F.2d 527, 528-529 (8th Cir. 1974).

Florida Rule of Discipline 3-7.6, App. E, pp.26a-30a, of its *Rules Regulating the Florida Bar* provides for notice and hearing to determine sanction following an attorney's felony conviction. New York Judiciary Law § 90(4)(a) and (b), App. E, p.39a, mandates automatic disbarment of an attorney following a felony conviction with no notice or hearing.

Review of the Florida disbarment order in this case which avoids Florida due process requirements by giving legal effect to a due process deficient, "gross injustice" New York ("home state"?) disbarment order provides an opportunity for this Court to articulate minimum Constitutional due process procedures in state attorney disciplinary proceedings which will resolve existing conflicts among the states and federal circuit courts concerning whether notice and hearing are required in a felony attorney discipline proceeding prior to disbarment.

IV. REVIEW IS REQUIRED TO DETERMINE WHETHER STATES CAN DISBAR ATTORNEYS FOR GOOD FAITH PARTICIPATION IN THE ATTORNEY DISCIPLINARY PROCESS, AND TO DETERMINE WHETHER NOT CONSIDERING ILLNESS INDUCED MISCONDUCT TO MITIGATE SANCTION IN A STATE ATTORNEY DISCIPLINE PROCEEDING VIOLATES THE AMERICANS WITH DISABILITIES ACT

Florida's disbarring petitioner for participating in the Florida attorney disciplinary process by providing evidence and legal authority in mitigation of sanction has a chilling effect on Constitutional guarantees of free speech, effective assistance of counsel, and the right to petition government for redress of grievances. Petitioner's good faith in seeking a Florida license suspension is established by reliance upon unopposed evidence that the New York plea agreement was satisfied when Florida authorities were notified of the New York conviction and petitioner surrendered his Florida Bar license by suspension, and petitioner's reliance upon cases from Florida and other jurisdictions holding that consent to license suspension is a legally recognized license surrender. Punishment for good faith participation in the attorney disciplinary process is a Constitutionally impermissible prior restraint on the exercise of guaranteed rights. Revoking an occupational license for what the Florida Referee found to be illness induced misconduct violates the federal policy against illness based discrimination set forth in The Americans With Disabilities Act, 42 U.S.C. § 12131, § 12132, App. E, pp.24a, 25a; is contrary to *Florida Standards* 3.0(6), which provides for considering "the lawyer's mental state," and 9.3(c) and (h), which provide for considering the lawyer's "personal or emotional problems" and "physical or mental

disability or impairment" "[i]n imposing sanction after a finding of lawyer misconduct"; and is inconsistent with six Florida attorney discipline cases in which suspension was imposed considering the lawyer's illness when the misconduct occurred. App. J, pp.53a-63a, is an excerpt from Petitioner's Initial Brief to Review Amended Report of the Referee Signed March 28, 2005 offering six Florida Supreme Court cases supporting suspension for illness induced misconduct which were not mentioned in the lower court disbarment order.

CONCLUSION

Florida's disciplining petitioner with a longer period of disbarment than New York or the District of Columbia based upon residence in disregard of the evidence and legal authority including its own decisions, the United States and Florida Constitutions, and this Court's decisions is an unprecedented disregard of a state's obligation as a government entity to follow due process sufficient, nondiscriminatory, procedures in official license proceedings where property and reputation interests are at stake. The police power does not authorize a state to disregard fundamental Constitutional rights by imposing ultimate, discriminatory, sanctions without evidentiary basis in contravention of prevailing legal authority. A consistent, clear, national statement of Constitutional minimum due process procedures in felony state attorney discipline proceedings from this Court will resolve the sharp conflicts among the states and federal Circuits concerning those requirements and encourage the states to recognize and apply rather than disregard the U.S. Constitution in the discharge of their attorney discipline function.

The petition for a writ of certiorari should be granted to determine whether national due process procedures and

required consideration of common criteria such as the *ABA Standards* in attorney discipline proceedings are essential to encourage consistency of sanction for similar misconduct within and among jurisdictions.[1]

---

[1] The Referee's Amended Report **abandoned** consideration of the *Florida Bar Standards* in recommending disbarment. The Referee found that petitioner's participation in the Florida attorney discipline process – after the New York sentencing judge rejected petitioner's request to consider surrender of bar licenses instead of a jail sentence – to be such a serious "attempted misrepresentation" that suspension indicated by application of the *Florida Bar Standards* should not be imposed. App. D, pp.14a - 16a, 18a.

Without applying the *Florida Standards*, finding an additional aggravating fact, or offering any rationale different from the Referee, the Florida Supreme Court increased petitioner's sanction from disbarment recommended by the Referee to "permanent practical disbarment." The Florida Supreme Court relied upon *Untracht, supra*, and *Sanders, supra*, and failed to mention the inconsistent Florida *Wilkes, supra*, and *Karahalis, supra*, cases.

The Florida punishment enhancement increased the inconsistency in sanctions between that ordered for petitioner and that ordered for attorneys who committed more serious practice related crimes. *See, e.g., In re Cappell*, 866 A.2d 784 (D.C. 2004), where suspension was ordered for an attorney who stole client funds while suffering from depression; *In re Weiss*, 839 A.2d 670 (D.C. 2003), where suspension was ordered for a mentally ill attorney who stole law firm funds on 54 occasions totalling $676.465.79; and *Discipline of McLendon*, 120 Wash. 2d 761, 845 P.2d 1006 (Wash. 1993), where suspension was ordered for a mentally ill attorney who pled guilty to felony theft of client funds while on criminal probation, failed to make restitution for $1,127,853 in borrowed client funds, and committed 11 other ethical violations. Florida's punishment enhancement order did not mention that suspension is the appropriate punishment under the

---

Florida Bar Standards applied by the Referee, and under prevailing Florida attorney discipline cases. Also see case discussion in App. J, pp.53a-63a.

Diminishing sanction disparity for similar conduct in attorney discipline matters is a goal of the *ABA Standards for Imposing Lawyer Sanctions* (*"ABA Standards"*) upon which the *Florida Standards for Imposing Lawyer Sanctions* (*"Florida Standards"*) are based. The *ABA Standards* say, in part:

> Inconsistent sanctions, either within a a jurisdiction or among jurisdictions, cast doubt on the efficiency and the basic fairness of all disciplinary systems.
>
> As an example of this problem of inconsistent sanctions, consider the range in levels of sanctions imposed for a conviction for failure to file federal income taxes. In one jurisdiction, in 1979, a lawyer who failed to file income tax returns for one year was suspended for one year, while, in 1980, a lawyer who failed to file income taxes for two years was merely censured. Within a two year period, the sanctions imposed on lawyers who converted their clients' funds included disbarment, suspension, and censure. The inconsistency of sanctions imposed by different jurisdictions for the same misconduct is even greater.
>
> An examination of these cases illustrates the need for a comprehensive system of sanctions. In many cases, different sanctions are imposed for the same acts of misconduct, and the courts rarely provide any explanation for the selection of sanctions.

See also, Terry Carter, *Bounced from the Bar: Lawyers Who Lose Their Licenses for Fraud or Other Misconduct Can Win*

Respectfully submitted,

Leonard W. Krouner
4196 Mt. Hukee Avenue
San Diego, CA 92117-4732
(858) 277-5323

Petitioner pro se

September 17, 2007

Reinstatement, if They Practice in the Right State, 89 A.B.A.J. 56 (2003).

Florida's permanent practical disbarment of petitioner without considering nineteen mitigators supporting a sanction less than disbarment including judgment impaired by multiple illnesses, misconduct not involving client matters, full restitution, public service, community service, rehabilitation, restoration of civil rights, early release from probation, remorse, absence of financial loss, competency as an attorney, not concealing improper activity, not taking public funds, and cooperation in the attorney discipline process identified in *Florida Standards* 9.22 and 9.23 and Florida cases is an inconsistent, harsh sanction resulting from the Florida Supreme Court not applying the *Florida Bar Standards* or Florida attorney discipline cases.

Consistency of sanction in attorney discipline in Florida and between Florida and other jurisdictions starts with uniform Constitutional due process procedures and application of common criteria. This case provides an opportunity to articulate due process standards and criteria to encourage consistent sanction in attorney discipline cases which is still a problem 24 years after the *ABA Standards* were last amended in 1992.

APPENDIX A

SUPREME COURT OF FLORIDA

Case No. SC04-819

Lower Tribunal No(s).. 2004-00,716(2A)

[Filed June 19, 2007]

THE FLORIDA BAR,	)
Complainant,	)
	)
v.	)
	)
LEONARD WILLIAM KROUNER,	)
Respondent.	)
	)

Respondent's Motion for Rehearing is hereby denied on the merits.

LEWIS, C.J., and WELLS, ANSTEAD, PARIENTE, QUINCE, CANTERO, and BELL, JJ., concur.

A True Copy
Test:

/s/
Thomas D. Hall
Clerk, Supreme Court

bhp
Served:

HON. GEORGE S. REYNOLDS, III, JUDGE
KENNETH LAWRENCE MARVIN
DONALD M. SPANGLER
LEONARD WILLIAM KROUNER

APPENDIX B

SUPREME COURT OF FLORIDA

Case No. SC04-819

Lower Tribunal No(s).. 2004-00,716(2A)

[Filed March 21, 2007]

THE FLORIDA BAR,	)
Complainant,	)
	)
v.	)
	)
LEONARD WILLIAM KROUNER,	)
Respondent.	)
	)

After having taken the parties' briefs, oral arguments, and respondent's post oral argument submission into consideration and after due deliberation, the report of the referee is approved and Leonard William Krouner is disbarred, effective immediately. *See Fla. Bar v. Untracht*, 923 So. 2d 457 (Fla. 2006) (holding attorney disbarred in his home state will not be allowed to practice in Florida until readmitted in his home state); *Fla. Bar v. Sanders*, 580 So. 2d 594 (Fla. 1991) (same).

Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for

recovery of costs from Leonard William Krouner in the amount of $1,608.90, for which sum let execution issue.

Not final until time expires to file motion for rehearing, and if filed, determined. *The filing of a motion shall not alter the effective date of this disbarment.*

LEWIS, C.J., and WELLS, ANSTEAD, PARIENTE, QUINCE, CANTERO, and BELL, JJ., concur.

A True Copy
Test:

/s/
Thomas D. Hall
Clerk, Supreme Court

bhp
Served:
HON. GEORGE S. REYNOLDS, III, JUDGE
KENNETH LAWRENCE MARVIN
DONALD M. SPANGLER
LEONARD WILLIAM KROUNER

APPENDIX C

SUPREME COURT OF FLORIDA

Case No.: SC03-1644

[Filed March 1, 2004]

THE FLORIDA BAR,
Complainant,

v.

LEONARD WILLIAM KROUNER,
Respondent.

Lower Tribunal No.: 2003-01,153(2A) NFC

On consideration of respondent's Motion to Have Order of Suspension Made Effective as of February 3, 2003, it is ordered that the suspension ordered by this Court on December 11, 2003, shall be effective, nunc pro tunc, May 12, 2003, the date of respondent's felony conviction. It is further ordered that respondent's Motion to Seal Medical Records Respondent Submits in this Proceeding is hereby granted without prejudice to review of the medical records by Referee and Bar agents as referee deems appropriate and orders.

A True Copy
Test:

/s/ Thomas D. Hall
Thomas D. Hall
Clerk, Supreme Court

dy
Served:
JOHN ANTHONY BOGGS
EDWARD ITURRALDE
LEONARD WILLIAM KROUNER

APPENDIX D

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

Case No. SC04-819

TFB File No. 2004-00,716(2A)

[March 28, 2005]

THE FLORIDA BAR,	)
Complainant,	)
	)
v.	)
	)
LEONARD WILLIAM KROUNER,	)
Respondent.	)
	)

AMENDED REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On May 11, 2004, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. Respondent filed his Answer and Response

to Request for Admissions on June 10, 2004, wherein he admitted all allegations in the Complaint except for paragraph 7 which lists the rules Respondent is alleged to have violated by his conduct. On July 14, 2004, Complainant filed its Motion for Summary Judgment based on Respondent's admissions as well as on conclusive proof of misconduct in a foreign jurisdiction. Respondent filed a Motion to Appear by Telephone, To Submit Medical Records In Camera, and To Omit Information Regarding Respondent's Medical Condition From Any Report of Referee on August 25, 2004. On September 1, 2004 Complainant filed a response to Respondent's Motion and propounded Interrogatories to Respondent, which were answered. On October 4, 2004, a hearing was held on Respondent's Motion and, after hearing argument from counsel for the parties, the referee ruled that the Respondent was required to testify in person, that any submitted medical records would be sealed from public inspection and that the referee would revisit the issue of what to include in the Report of Referee after the final hearing. On October 29, 2004 a hearing was held on the Motion for Summary Judgment and for a determination of discipline. Respondent traveled from California to Florida to attend the October 29, 2004 hearing at which appearances were made by his counsel, Richard Greenberg, Esq. and Edward Iturralde, Esq., Bar Counsel. Respondent's medical expert, testified by telephone at the October 29, 2004 hearing. The referee also revised his pre-trial ruling to make clear that the medical records and testimony were to be sealed from inspection by the general public but were to be released to any appropriate disciplinary authority. The Motion for Summary Judgment was granted and the referee heard testimony and received exhibits on the issue of the appropriate discipline.

Supplemental Summary of Proceedings

The referee made oral findings and recommendations at the end of the October 29 2004 hearing, which were subsequently reduced to writing and signed on November 29, 2004. After the hearing but before the signing of the Report of Referee, Respondent filed a Petition for Disciplinary Resignation in the Florida Supreme Court. The clerk assigned a new case number for the Petition, SC04-2139. On December 1, 2004, Richard Greenberg, respondent's counsel, moved to withdraw from case number SC04-2139. Respondent obtained new counsel, Paul Remillard, who filed a Motion for Amendment of Judgment. Respondent, acting *pro se,* also filed several motions and supplements seeking a variety of relief from the courts, The Florida Bar, and respondent's attorneys. By Order dated December 28, 2004, the Florida Supreme Court granted Mr. Greenberg's Motion to Withdraw from the Petition for Disciplinary Resignation case (SC04-2139), but noted that Greenberg remained counsel in SC04-819. The Supreme Court then relinquished jurisdiction of both cases to the referee "for the purpose of entertaining the motion to amend the referee's report.... [and] act on all other aspects of respondent's motion, as appropriatc."

The referee initially set a hearing on respondent's motion for January 25, 2005, which was rescheduled to March3, 2005, based on Respondent's unopposed motion for continuance. Both Mr. Greenberg and Mr. Remillard filed motions to withdraw from further representation of Mr. Krouner. On March 1, 2005, J. Layne Smith and Anthony Cammarata filed a "Notice of Limited Appearance" as co-counsel on Mr. Krouner's behalf.

Present at the March 3, 2005, hearing were Mr. Krouner, who traveled from California, Mr. Smith, Mr. Cammarata, Mr. Greenberg, and Edward Iturralde, Bar Counsel. Mr. Remillard appeared by telephone. The referee granted Remillard's and Greeenberg's Motions to Withdraw after hearing from both the Bar and Mr. Krouner that they were unopposed. Mr. Krouner stated, however, that he reserved the right to have Greenberg's and Remillard's representation of him reviewed in another venue. The remaining motions seeking stays, remands, or tolling of time were denied as moot as the Supreme Court had already granted additional time for the referee to reconsider the report of referee and had remanded the cases. Any other motion, not otherwise addressed was denied. During the hearing on March 3, 2005, Respondent advised that he wished to withdraw his previously filed Petition for Disciplinary Resignation, which the referee permitted, after allowing Mr. Krouner time to discuss the issue with counsel.

The referee heard argument from counsel, additional testimony from Mr. Krouner, and received the following six exhibits:

1) Affidavit of Richard Greenberg, Esquire

2) Affidavit of Robert P. Roche, Esquire

3) Respondent's Proposed Report of Referee

4) Composite, dictionary definitions of "surrender" and "sacrifice"

5) Letter dated May 27, 2003, from Robert P. Roche to The Florida Bar

6) Krouner's Petition to Terminate or Modify Suspension in SC03-1644

Respondent also prepared a set of record appendices consisting of: Appendix A - hearing exhibits from October 29, 2004 hearing; Appendix B - Volume I of October 29, 2004 hearing transcript; Appendix C - Volume II of October 29, 2004 hearing transcript; Appendix D - Affidavit of Robert P. Roche, Esquire. All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. *Jurisdictional Statement*. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida. Respondent was admitted to The Florida Bar on May 29, 1973.

B. *Narrative Summary Of Case*. Respondent entered a guilty plea and was convicted on May 12, 2003 of a) Insurance Fraud in the Third Degree, b) Grand Larceny in the Fourth Degree, and c) Workers' Compensation Fraud, each of which is a felony under the laws of the State of New York, by The Honorable Thomas J. McNamara, Acting New York State Supreme Court Justice, County of Albany. *The People of the State of New York v. Leonard Krouner*, Superior Court Information # 03-080. The conviction was reduced to writing in a Certificate of Conviction dated June 3, 2003. The Certificate of Conviction is a determination of guilt by a court of competent jurisdiction that Leonard William Krouner committed a felony and, therefore, pursuant to Rule 3-7-2(b), Rules Regulating The Florida Bar, is conclusive proof of

misconduct. The convictions resulted from Respondent having sought and received disability and workers' compensation benefits for lost wages based on an injury to his back, even though he was still actively engaged in the practice of law.

Although respondent reported that he was unable to work during the benefit period, he made no effort to conceal his activity from his insurers. During the benefit period: (1) respondent's disability insurance benefit checks were deposited in the same bank account with respondent's earned income checks, (2) respondent provided releases which allowed the disability insurance carriers independent access to the bank account used for deposit of respondent's disability insurance benefit checks and respondent's earned income checks, (3) respondent issued billing statements to public schools and clients, which described respondent's professional activities, and were readily traceable through respondent's bank account deposit records and (4) respondent provided an insurer with detailed monthly expense summaries.

At the hearing The Florida Bar introduced transcript copies of Mr. Krouner's plea colloquy and sentencing hearing held in New York. Theses transcripts revealed that part of Respondent's plea agreement was that he "surrender" his three law licenses. Respondent testified that he had held licenses from New York, Florida, and the District of Columbia. By operation of New York's disciplinary rules, respondent was automatically disbarred in New York upon his conviction. Respondent was currently contesting the disciplinary cases in Florida and D.C. Respondent testified that when he told the sentencing court that he would "surrender" his licenses, he meant that to mean that he would avail himself of all due process rights available in those jurisdictions to contest his discipline. Such explanation did not ring true and is contrary to the clear and plain meaning of the

word "surrender." When a lawyer pleads guilty to a felony and as a condition to that plea agrees to surrender all his bar licenses, he is bound by that decision and is estopped from complaining.

Supplemental Findings of Fact

Since the prior disciplinary hearing, respondent has had his civil rights restored by the same judge that sentenced him; however, that judge was not made aware of the pending disciplinary proceedings in Florida and the District of Columbia. To the extent it was not previously clear, Krouner testified that the funds he had taken did not involve any client or public funds and that he provided full restitution to the private insurance carriers. Respondent was not consistently under psychiatric treatment until he moved to California after serving his term in prison. He is now in regular consultation with Dr. McFadden and following his doctor's advice.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating Rules 3-4.3 (Misconduct and Minor Misconduct), 3-4.4 (Criminal Misconduct), 4-8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), and 4-8.4(c) (Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) of the Rules Regulating The Florida Bar.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. Disbarment; nunc pro tunc to May 12, 2003; and

B. Payment of The Florida Bar's costs in these proceedings.

Supplemental Recommendation as to Discipline

Had Mr. Krouner not withdrawn his Petition for Disciplinary Resignation, the referee would have recommended that the Supreme Court accept his resignation. Such a resolution would have been consistent with the statements made by Mr. Krouner to the sentencing judge in New York. Unfortunately, respondent decided to withdraw his petition, so that option is no longer available. Therefore, the referee is not inclined to recommend less than disbarment because respondent told Judge MacNamara several times that he would surrender or sacrifice all of his licenses to practice law. This referee interprets "surrender" and "sacrifice" to have their plain meaning - that Mr. Krouner would give up his licenses to practice law. To now argue that these words mean something else -- a temporary suspension or an opportunity to seek some other sanction -- goes to the very heart of an attorney's professional practice: honesty and candor to the tribunal. Respondent argued that the case of *Burns v. Huffstetler*, 433 So.2d 964 (Fla. 1983) requires a different result, In *Burns*, the Supreme Court granted prohibition against a judge that accepted a consent judgment in a criminal contempt case for misconduct in a criminal

proceeding. The trial court accepted a consent judgment that sentenced respondent to 179 days in jail, but stayed the sentence if Burns surrendered his license to practice law. The trial court retained jurisdiction to reinstate Burns after a demonstration of compliance, competence, and rehabilitation. The Supreme Court found that contempt procedures were appropriate for lesser infractions but that cases warranting suspension and disbarment had to be conducted according to the established disciplinary procedures available to The Florida Bar or to the judiciary with the State Attorney acting as prosecutor, both of which are reviewed by the Supreme Court. This case is distinguishable, although there are obvious similarities. The *Burns* case stands for the proposition that the established procedures must be followed to suspend or disbar an attorney and that the inherent contempt powers of courts to punish attorneys should be reserved for "lesser infractions." *Burns* at 965 (citing *Shelly v. District Court of Appeal* 305 So.2d 471 (Fla. 1977). The Supreme Court in *Burns* stated that contempt proceedings or disciplinary proceedings could still go forward against Burns. And that is precisely where we are in this case, traditional discipline proceedings prosecuted by The Florida Bar before a referee and subject to Supreme Court review. Had the New York court ordered respondent to surrender his license, without any offer or supplication by Mr. Krouner, the referee might agree with respondent's argument. But the sentencing court made no mention of the Florida license during the sentencing hearing or in the written judgment of conviction. It was respondent who pled for leniency and offered his licenses as an enticement to obtain that leniency.

The law in Florida is clear: while disbarment is the presumed sanction for an attorney convicted of a felony, it is not automatic. *The Florida Bar v. Jahn,* 509 So.2d 285 (Fla, 1987), A respondent is entitled to submit mitigating evidence

to overcome the presumption. This respondent presented compelling mitigating evidence relating to his psychological, state of mind at the time of the commission of the felonies. But for respondent's multiple statements to the sentencing court that he would surrender or sacrifice his three licenses to practice law, the referee might have found that Krouner had overcome the presumption of disbarment. However, respondent told the sentencing judge, "Three professional licenses which are precious to me and which I've worked maintain in my standing for my entire adult life are being sacrificed and together with those licenses goes the essence of my being my life's blood of work," (Transcript of May 12, 2003, Sentencing Hearing, p. 13, lines 7-12), Respondent was competent when he made his statements to the New York court and was represented by competent counsel at the time of the plea and sentencing. When the referee heard this evidence, he found this respondent's statements to be an aggravating factor that outweighed the psychological testimony.

Assuming that the issue concerning the surrender of his licenses had not existed, or if the Supreme Court finds the referee's position on this issue to be wrong as a matter of law, then the referee would have recommended that respondent be indefinitely suspended from the practice of law in Florida until such time as he can demonstrate through medical and psychiatric testimony in a reinstatement proceeding, subject to all the procedural requirements of such proceedings, that he is fully competent and able to practice law, and that he thereafter be placed on indefinite probation with the special condition of that probation that he provide The Florida Bar with quarterly reports from a treating psychiatrist, certifying that respondent remains competent and is complying with his treatment and regularly taking his medication.

V. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following:

A. Personal History of Respondent:

Age: 57 years old
Date admitted to the Bar: May 29, 1973

B. Aggravating Factors: I find that the following aggravating factors apply in this case under Florida Standard 9.22:

a) Prior Discipline:

1. By Court Order dated December 11, 2003, Respondent received a felony suspension effective May 12, 2003 in Supreme Court Case No.SC03-1644 (The Florida Bar File No. 2003-01,153(2A)).

2. On June 16, 1997, Respondent received a grievance committee admonishment for minor misconduct in The Florida Bar File No. 1997-00,623 (02), for the same misconduct described in paragraph 3, below.

3. By Order dated June 22, 1995, Respondent was censured by the Supreme Court of New York for professional misconduct including signing client's names to a document in a probate matter, notarizing those signatures, and his guilty plea to a misdemeanor for theft of $964.00 worth of telephone calls billed to

Toyota, a defendant in an action initiated by Respondent on his own behalf.

Although the conduct for which he was disciplined occurred more than seven years ago, the discipline was imposed less than seven years from the filing of this complaint.

b) Dishonest or selfish motive: Respondent clearly obtained funds to which he was not entitled to; and

f) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process: Respondent's attempt to argue that the word "surrender" meant "litigate" was inappropriate and an attempted misrepresentation to either the sentencing court or this referee.

C. Mitigating Factors: I find that the following mitigating factors apply in this case under Florida Standard 9.32:

c) Personal or emotional problems: Respondent was suffering from a variety of psychological and physical disorders, more fully described in paragraph h below, which added additional stress and difficulty into his personal and professional life.

d) Timely good faith effort to make restitution or to rectify consequences of misconduct: Respondent paid over $97,000.00 as part of his plea to the criminal charges. Although compelled restitution is not considered a mitigating factor, I find that Respondent had offered to pay restitution before the commencement of formal criminal proceedings, but

was advised to withhold payment until the criminal matter was settled.

g) Character or reputation: Respondent has submitted several character letters reflecting a good reputation in his community and a dedication to public service aiding disadvantaged members of society.

h) Physical or mental disability or impairment: Respondent presented the testimony of Dr. Robin Tassinari, a qualified psychologist appearing by telephone from New York. Dr. Tassinari relied on reports from other medical and mental health professionals that had treated Respondent in addition to his own observations from consultations with Mr. Krouner. He described a host of psychological problems that have been plaguing Mr. Krouner for decades, including before, during, and after the events that led to his current and past discipline. Respondent also presented evidence that he had injured his back, which restricted his movement and subjected him to pain. While Dr. Tassinari's testimony was helpful, impressive, and informative, this mitigating evidence was insufficient to overcome the presumption of disbarment, especially when weighed with the other aggravating and mitigating factors.

j) Interim rehabilitation: Respondent has made efforts to treat his mental disabilities and appears to have reflected on his past conduct in order to avoid repeated incidents

k) Imposition of other penalties or sanctions: Respondent was penalized criminally, disbarred by

New York, and has discipline pending in the District of Columbia.

l) Remorse: Respondent testified that he was sorry for his conduct and the effects it has had on him, his family, and the profession; and

m) Remoteness of prior offenses: As discussed above, the conduct surrounding his prior discipline occurred more than seven years ago.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs		$1,250.00
Court Reporter's Fees		346.90
Investigative Costs		12.00
	TOTAL	$1,608.90

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 28 day of March, 2005.

/s/_____
George Reynolds
Circuit Judge/Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been ~~mailed~~ hand delivered to THE HONORABLE THOMAS D HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular U.S. Mail to JOHN A. BOGGS, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; EDWARD ITURRALDE, Bar Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and J. Layne Smith, Counsel for Respondent, 2629 Mitcham Drive, Tallahassee, Florida 32308, and Anthony Cammarata, Co-Counsel for Respondent, 3370 Capital Circle, N.E. Suite I, Tallahassee, Florida 32308 on this 28 day of MARCH, 2005.

/s/_____
GEORGE S. REYNOLDS
Circuit Judge / Referee

APPENDIX E

UNITED STATES CONSTITUTION

Article III

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

* * *

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, * * *; --to controversies * * * between a state and citizens of another state; * * * and between a state, or the citizens thereof, and foreign states, citizens or subjects.

* * *

In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

* * *

Article IV, § 2, cl. 1

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Amendment I

Congress shall make no law * * * abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, * * * nor be deprived of life, liberty, or property, without due process of law * * *.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation; * * * and to have the Assistance of Counsel for his defense.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

UNITED STATES CODE
TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES
SUBCHAPTER II - PUBLIC SERVICES
Part A - Prohibition Against Discrimination and Other Generally Applicable Provisions

42 U.S.C. § 12131. Definitions

As used in this subchapter:

(1) Public entity

The term "public entity" means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102 (4) [1] of title 49).

(2) Qualified individual with a disability

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or

the participation in programs or activities provided by a public entity.

42 U.S.C. § 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

RULES REGULATING THE FLORIDA BAR
CHAPTER 3. RULES OF DISCIPLINE
3-7. PROCEDURES

RULE 3-7.6 PROCEDURES BEFORE A REFEREE

(a) Referees. The chief justice shall have the power to appoint referees to try disciplinary cases and to delegate to a chief judge of a judicial circuit the power to appoint referees for duty in the chief judge's circuit. Such appointees shall ordinarily be active county or circuit judges, but the chief justice may appoint retired judges.

(b) Trial by Referee. When a finding has been made by a grievance committee or by the board that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action, and the formal complaint based on such finding of probable cause has been assigned by the chief justice for trial before a referee, the proceeding thereafter shall be an adversary proceeding that shall be conducted as hereinafter set forth.

(c) Pretrial Conference. Within 60 days of the order assigning the case to the referee, the referee shall conduct a pretrial conference. The purpose of the conference is to set a schedule for the proceedings, including discovery deadlines and a final hearing date. The referee shall enter a written order in the proceedings reflecting the schedule determined at the conference.

(d) Venue. The trial shall be held in the county in which an alleged offense occurred or in the county where the respondent resides or practices law or last practiced law in Florida, whichever shall be designated by the Supreme Court of Florida; provided, however, that if the respondent is not a

resident of Florida and if the alleged offense is not committed in Florida, the trial shall be held in a county designated by the chief justice.

(e) Style of Proceedings. All proceedings instituted by The Florida Bar shall be styled "The Florida Bar, Complainant, v. (name of respondent), Respondent," and "In The Supreme Court of Florida (Before a Referee)."

(f) Nature of Proceedings.

(1) *Administrative in Character.* A disciplinary proceeding is neither civil nor criminal but is a quasi-judicial administrative proceeding. The Florida Rules of Civil Procedure apply except as otherwise provided in this rule.

(2) *Discovery.* Discovery shall be available to the parties in accordance with the Florida Rules of Civil Procedure.

(g) Bar Counsel. Bar counsel shall make such investigation as is necessary and shall prepare and prosecute with utmost diligence any case assigned.

(h) Pleadings. Pleadings may be informal and shall comply with the following requirements:

(1) *Complaint; Consolidation and Severance.*

(A) Filing. The complaint shall be filed in the Supreme Court of Florida.

(B) Content. The complaint shall set forth the particular act or acts of conduct for which the attorney is sought to be disciplined.

* * *

(2) *Answer and Motion.* The respondent shall answer the complaint and, as a part thereof or by separate motion, may challenge only the sufficiency of the complaint and the jurisdiction of the forum. All other defenses shall be incorporated in the respondent's answer. The answer may invoke any proper privilege, immunity, or disability available to the respondent. All pleadings of the respondent must be filed within 20 days of service of a copy of the complaint.

* * *

(5) *Filing and Service of Pleadings.*

(A) Prior to Appointment of Referee. Any pleadings filed in a case prior to appointment of a referee shall be filed with the Supreme Court of Florida and shall bear a certificate of service showing parties upon whom service of copies has been made. On appointment of referee, the Supreme Court of Florida shall notify the parties of such appointment and forward all pleadings filed with the court to the referee for action.

(B) After Appointment of Referee. All pleadings, motions, notices, and orders filed after appointment of a referee shall be filed with the referee and shall bear a certificate of service showing service of a copy on staff counsel and bar counsel of The Florida Bar and on all interested parties to the proceedings.

(6) *Amendment.* Pleadings may be amended by order of the referee, and a reasonable time shall be given within which to respond thereto.

* * *

(j) The Respondent. Unless the respondent claims a privilege or right properly available under applicable federal or state law, the respondent may be called as a witness by The Florida Bar to make specific and complete disclosure of all matters material to the issues. When the respondent is subpoenaed to appear and give testimony or to produce books, papers, or documents and refuses to answer or to produce such books, papers, or documents, or, having been duly sworn to testify, refuses to answer any proper question, the respondent may be cited for contempt of the court.

* * *

(m) Referee's Report.

(1) *Contents of Report.* Within 30 days after the conclusion of a trial before a referee or 10 days after the referee receives the transcripts of all hearings, whichever is later, or within such extended period of time as may be allowed by the chief justice for good cause shown, the referee shall make a report and enter it as part of the record, but failure to enter the report in the time prescribed shall not deprive the referee of jurisdiction. The referee's report shall include:

(A) a finding of fact as to each item of misconduct of which the respondent is charged, which findings of fact shall enjoy the same presumption of correctness as the judgment of the trier of fact in a civil proceeding;

(B) recommendations as to whether the respondent should be found guilty of misconduct justifying disciplinary measures;

(C) recommendations as to the disciplinary measures to be applied;

(D) a statement of any past disciplinary measures as to the respondent that are on record with the executive director of The Florida Bar or that otherwise become known to the referee through evidence properly admitted by the referee during the course of the proceedings (after a finding of guilt, all evidence of prior disciplinary measures may be offered by bar counsel subject to appropriate objection or explanation by respondent); and

* * *

RULE 3-7.7 PROCEDURES BEFORE SUPREME COURT OF FLORIDA

All reports of a referee and all judgments entered in proceedings under these rules shall be subject to review by the Supreme Court of Florida in the following manner:

(a) Right of Review

(1) Any party to a proceeding may procure review of a report of a referee or a judgment, or any specified portion thereof, entered under these rules.

(2) The Supreme Court of Florida shall review all reports and judgment of referees recommending

probation, public reprimand, suspension, disbarment, or resignation pending disciplinary proceedings.

(3) A referee's report that does not recommend probation, public reprimand, suspension, disbarment, or resignation pending disciplinary proceedings, shall be final if not appealed.

* * *

FLORIDA ANNOTATED STATUTES
TITLE 7. EVIDENCE
CHAPTER 90. EVIDENCE CODE

Fla. Stat. § 90.202. Matters which may be judicially noticed

A court may take judicial notice of the following matters, to the extent that they are not embraced within s. 90.201:

(1) Special, local, and private acts and resolutions of the Congress of the United States and of the Florida Legislature.

(2) Decisional, constitutional, and public statutory law of every other state, territory, and jurisdiction of the United States.

* * *

(5) Official actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States.

(6) Records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States.

(7) Rules of court of any court of this state or of any court of record of the United States or of any other state, territory, or jurisdiction of the United States.

* * *

Fla. Stat. § 90.203. Compulsory judicial notice upon request

A court shall take judicial notice of any matter in s. 90.202 when a party requests it and:

(1) Gives each adverse party timely written notice of the request, proof of which is filed with the court, to enable the adverse party to prepare to meet the request.

(2) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.

FLORIDA RULES OF COURT
FLORIDA BAR-FLORIDA'S STANDARDS FOR IMPOSING LAWYER SANCTIONS AND BLACK LETTER RULES

A. PURPOSE AND NATURE OF SANCTIONS

* * *

1.3 PURPOSE OF THESE STANDARDS

These standards are designed for use in imposing a sanction or sanctions following a determination by clear and convincing evidence that a member of the legal profession has violated a provision of the Rules Regulating The Florida Bar (or applicable standard under the laws of the jurisdiction where the proceeding is brought). Descriptions in these standards of substantive disciplinary offenses are not intended to create grounds for determining culpability independent of those Rules. The Standards constitute a model, setting forth a comprehensive system for determining sanctions, permitting flexibility and creativity in assigning sanctions in particular cases of lawyer misconduct. They are designed to promote: (1) consideration of all factors relevant to imposing the appropriate level of sanctions in an individual case; (2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; (3) consistency in the imposition of disciplinary sanction s for the same or similar offenses within and among jurisdictions.

B. SANCTIONS

* * *

2.2 DISBARMENT

Disbarment terminates the individual's status as a lawyer. Where disbarment is not permanent, procedures should be established for a lawyer who has been disbarred to apply for readmission, provided that:

(1) no application should be considered for five years from the effective date of disbarment; and

(2) the petition must show by clear and convincing evidence;

(a) successful completion of the bar examination; and

(b) rehabilitation and fitness to practice law.

* * *

C. FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS

3.0 GENERALLY

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

(a) the duty violated;
(b) the lawyer's mental state;

(c) the potential or actual injury caused by the lawyer's misconduct; and
(d) the existence of aggravating or mitigating factors.

* * *

9.0 AGGRAVATION AND MITIGATION

* * *

9.2 AGGRAVATION

9.21 Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.

9.22 Factors which may be considered in aggravation. Aggravating factors include:

(a) prior disciplinary offenses; provided that after 7 or more years in which no disciplinary sanction has been imposed, a finding of minor misconduct shall not be considered as an aggrevating factor;

(b) dishonest or selfish motive;

(c) a pattern of misconduct;

(d) multiple offenses;

(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;

(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;

(g) refusal to acknowledge wrongful nature of conduct;

(h) vulnerability of victim;

(i) substantial experience in the practice of law;

(j) indifference to making restitution;

(k) obstruction of fee arbitration awards by refusing or intentionally failing to comply with a final award.

9.3 MITIGATION

* * *

9.32 Factors which may be considered in mitigation. Mitigating factors include:

(a) absence of a prior disciplinary record;
(b) absence of a dishonest or selfish motive;
(c) personal or emotional problems;
(d) timely good faith effort to make restitution or to rectify consequences of misconduct;
(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
(f) inexperience in the practice of law;
(g) character or reputation;
(h) physical or mental disability or impairment;
(i) unreasonable delay in disciplinary proceeding provided that the respondent did not substantially contribute to the

delay and provided further that the respondent has demonstrated specific prejudice resulting from that delay;
(j) interim rehabilitation;
(k) imposition of other penalties or sanctions;
(l) remorse;
(m) remoteness of prior offenses;
(n) prompt compliance with a fee arbitration award.

NEW YORK CONSOLIDATED LAW SERVICES
JUDICIARY LAW
ARTICLE 4. APPELLATE DIVISION

NY CLS Jud § 90 (2007)

§ 90. Admission to and removal from practice by appellate division; character committees

* * *

4. a. Any person being an attorney and counsellor-at-law who shall be convicted of a felony as defined in paragraph e of this subdivision, shall upon such conviction, cease to be an attorney and counsellor-at-law, or to be competent to practice law as such.

b. Whenever any attorney and counsellor-at-law shall be convicted of a felony as defined in paragraph e of this subdivision, there may be presented to the appellate division of the supreme court a certified or exemplified copy of the judgment of such conviction, and thereupon the name of the person so convicted shall, by order of the court, be struck from the roll of attorneys.

* * *

5. a. If such removal or debarment was based upon conviction for a serious crime or upon a felony conviction as defined in subdivision four of this section, and such felony conviction was subsequently reversed or pardoned by the president of the United States, or governor of this or another state of the United States, the appellate division shall have power to vacate or modify such order or debarment, provided, however, that if such attorney or counsellor-at-law

has been removed from practice in another jurisdiction, a pardon in said jurisdiction shall not be a basis for application for re-admission in this jurisdiction unless he shall have been readmitted in the jurisdiction where pardoned.

b. If such removal or debarment was based upon conviction for a felony as defined in subdivision four of this section, the appellate division shall have power to vacate or modify such order or debarment after a period of seven years provided that such person has not been convicted of a crime during such seven-year period.

* * *

c. * * * The attorney and counsellor-at-law shall petition for reinstatement by filing in the appellate division a copy of the order of removal together with a request for a hearing pursuant to the provisions of this paragraph. Upon such application, the order of removal shall be deemed an order of suspension for the purposes of a proceeding pursuant to this paragraph.

* * *

APPENDIX F

IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

Case Nos. SC04-819, SC04-2319

[Received at March 3, 2005, Florida Referee's Hearing]

EXHIBIT 2, supra p.10a

THE FLORIDA BAR,
Complainant,

v.

LEONARD WILLIAM KROUNER,
Respondent.

STATE OF NEW YORK)
)
COUNTY OF ALBANY) ss.:

ROBERT P. ROCHE, being duly sworn, deposes and says that:

1. I am an attorney admitted to practice law in New York State.

2. I represented Leonard W. Krouner, the respondent in the above captioned disciplinary proceeding before the Florida

Supreme Court, in the New York Supreme Court Albany County criminal case *People of the State of New York v. Leonard Krouner*, (Index No. 165-02), Indictment No. 03-080) ("criminal case").

3. This affidavit is submitted to provide information concerning the understanding regarding the plea agreement's effect on Mr. Krouner's attorney licenses in New York, Florida and the District of Columbia as it is mentioned in the criminal case plea minutes from February 20, 2003, and the sentencing minutes from May 12, 2003.

4. The New York Supreme Court Albany County certificate of conviction in the criminal case made no reference to loss of professional licenses as part of Mr. Krouner's sentence. New York State Supreme Court Justice Hon. Thomas McNamara did not make disbarment in any jurisdictions outside New York a condition of the sentence imposed on May 12, 2003.

5. The Albany County District Attorney did not require consent to disbarment in Florida or the District of Columbia. It was understood that Mr. Krouner's New York felony conviction resulted in automatic disbarment under New York Judiciary Law §90, and that he would forthwith tender his resignation from the New York Bar for that reason. However, it was not part of the plea bargain that he resign his licenses to practice in the District of Columbia or Florida. We did negotiate and he was directed to surrender those license – by which it was understood he would tender them for suspension pending the workings of the respective attorney disciplinary processes in the District of Columbia and Florida.

6. At the May 12, 2003 sentencing, Justice McNamara did not mention respondent's physical or mental condition

during the October 2000 to October 2001 disability benefit period. When I initially met with Mr. Krouner in 2003 he did not know why he was the subject of an Albany County Grand Jury investigation involving the disability benefits he received from October 2000 through October 2001. My investigation indicated that Mr. Krouner filed for disability benefits when his treating physicians advised him to curtail his professional activities and reported that fact to his disability insurance carriers. In the summer and fall of 2001, Mr. Krouner consulted with several New York attorneys who advised him he was entitled to the disability benefits after reviewing policy language and his medical records. When I directed Mr. Krouner's attention to his financial records for the disability benefit period he came to understand that he did substantial work in violation of the conditions under which he received benefits. A diagnostic report I ordered indicated that Mr. Krouner had pre-existing medical conditions which could account for his failure to accurately perceive and report his professional activity during the disability benefit period. Mr. Krouner's physical and mental status during the disability period appeared to have no impact on the sentencing decision.

7. Our client's agreement to surrender his law licenses in the District of Columbia and Florida was not understood by me as his attorney to be his resignation or disbarment. It was understood to be a consent to suspension of his right to practice pending determination of sanction by the authorities in the respective jurisdictions. Mr. Krouner's effort to mitigate sanctions in the District of Columbia and Florida is consistent with the plea agreement and sentence and consistent with my advice to him that those jurisdictions would make their own determination of appropriate sanction upon informing them of the New York Supreme Court's Memorandum and Order disbarring Mr. Krouner on May 23, 2003. I notified the District of Columbia and Florida bars of

Krouner's New York disbarment in May of 2003. To my knowledge Mr. Krouner has practiced law in no jurisdiction since May 12, 2003 in accordance with his surrender of those licenses as forementioned.

/s/
ROBERT P. ROCHE

Sworn to before me this 15th
day of February, 2005.

/s/
Notary Public

APPENDIX G

IN THE FLORIDA SUPREME COURT

Case No.: SC04-819

[Served December 17, 2006]

THE FLORIDA BAR,	)
Respondent,	)
	)
v.	)
	)
LEONARD WILLIAM KROUNER,	)
Appellant.	)
	)

APPELLANT'S REQUEST FOR COMPULSORY JUDICIAL NOTICE

(Florida Statues § 90.202 and § 90.203)

Appellant moves the Florida Supreme Court to take compulsory judicial notice of

I (A) the complaint in this case filed May 11, 2004 (B) proposed amended report of referee filed March 2, 2005 and Florida Standards for Imposing Lawyer Discipline 9.22 and 9.32,

II Florida Supreme Court Cases **Florida Bar re Untracht,** 923 So. 2d 457 (Fla. 2006), **Florida Bar re Sanders,** 580

So.2d 594 (Fla. 1991), **Florida Bar v. Karahalis,** 780 So. 2d 27 (Fla. 2001), and **Florida Bar v. Wilkes,** 179 So.2d 193 (Fla. 1965), and United States Supreme Court Cases **In re Ruffalo,** 390 U.S. 544, 551 (1968), **Theard v. United States** 354 U.S. 278 (1957), and **Selling v. Radford,** 243 U.S. 46, 51 (1917) or for such other and further relief as this Court deems appropriate as follows:

1. On November 29, 2006 appellant mailed notice of request for compulsory judicial notice to this Court and to Florida Bar Counsel. The notice identified the documents appellannt requested judicial notice be taken off and set forth the relevance of those documents to this case.

2. Appellant received no response from Florida Bar Counsel objecting to the request for compulsory judicial notice as of the date this document is posted.

3. Appellant is unaware of any reason why compulsory judicial notice should not be taken of the documents identified in the notice mailed on November 29, 2006.

WHEREFORE, appellant respectfully requests that compulsory judicial notice be taken of the documents identified in the notice mailed on November 29, 2006 or that this Court enter such other order as it deems appropriate.

Yours etc.

/s/
Leonard W. Krouner
4196 Mt. Hukee Avenue
San Diego, Ca 92117
Tel. (858) 277-5323
Fla Bar No. 159878

APPENDIX H

Florida Supreme Court Case Docket

Case No.: SC04-819 - Closed

THE FLORIDA BAR
vs. LEONARD WILLIAM KROUNER

Date Docketed: 05/11/2004
Description: COMPLAINT
Filed By: CO The Florida Bar FB BY: WD Edward Iturralde 886350
Notes: (O&I)

* * *

Date Docketed: 03/21/2007
Description: ORDER-OTHER SUBTANTIVE DY
Filed By:
Notes: Upon consideration of Krouner's submission of November 8, 2006, it is accepted as timely filed. Krouner's submission of November 9, 2006, titled "Appellant's Motion to (1) to Have this Court Consider"; his submission of December 4, 2006, titled "Appellant's Notice of Request for Compulsory Judicial Notice"; and his "Appellant's Request for Compulsory Judicial Notice" filed on December 28, 2006, are hereby stricken as unauthorized and untimely. The Florida Bar's Motion to Strike Respondent's Post Argument Submission and Respondent's Motion to Consider Karahalis is hereby denied as moot insofar as it addresses Krouner's

November 9, 2006, submission and denied on the merits insofar as it addresses Krouner's November 8, 2006, submission. Upon consideration of Krouner's "Appellant's Response to Respondent's Motion to Strike" filed on November 27, 2006, the response is denied on the merits, in part, and denied as moot, in part. Krouner's Notice of Request for Compulsory Judicial Notice filed February 8, 2007, is hereby denied.

* * *

APPENDIX I

IN THE FLORIDA SUPREME COURT

Case No.: SC04-819

[Posted November 7, 2006]

THE FLORIDA BAR,
Respondent,

v.

LEONARD WILLIAM KROUNER,
Appellant.

APPELLANT'S POST ARGUMENT SUBMISSION

Leonard W. Krouner
Appellant
4196 Mt. Hake Avenue
San Diego, Ca 92117
Tel. (858) 277-5323

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APPENDIX J

IN THE FLORIDA SUPREME COURT

Case No. SC04-819

[Forwarded prior to February 26, 2006]

THE FLORIDA BAR,	)
Complainant,	)
	)
v.	)
	)
LEONARD WILLIAM KROUNER,	)
Respondent.	)
	)

APPELLANT'S INITIAL BRIEF TO REVIEW AMENDED REPORT OF THE REFEREE SIGNED MARCH 28, 2005

Leonard W. Krouner
Respondent
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San Diego, CA 92117
Tel. (858) 277-5323

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* * *

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* * *

D. License Discipline Cases In Which License Surrender Was Not Interpreted to Require Consent to Disbarment

In *Florida Board of Bar Examiners v. Re: BJS* 2004 Lexis 1517 (Case No. SC 04-1623) (Fla. 2004) "surrender" was used describe the act of turning over an attorney license separate and distinct from consenting to license revocation (i.e., disbarment).

In *Eaton v. Kentucky Bar Association* 133 S.W.2d 479, 2004 Ky. Lexis 119 (Ky. 2004) an attorney with memory loss who admitted three acts of professional misconduct in representing clients including dishonesty, fraud, deceit, or misrepresentation

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sought permanent disbarment which was consented to by the Kentucky Bar Association. The Kentucky Supreme Court suspended Eaton for two years finding the violations did not justify permanent disbarment. Respondent's disbarment in this case - where the misconduct did not involve law practice - given his age, health, and the presumption against readmission assuming he can pass the Florida Bar Examination is likely to be a permanent disbarment for the reasons set forth in the Richard Greenberg affidavit sworn to February 24, 2005. (Exhibit 1 introduced at the March 3, 2005 disciplinary hearing before Referee Reynolds.)

In *LeMaster v. Kentucky Bar Association* 956 S.W.2d 208, 209 , 1997 Ky. Lexis 128 (Ky. 1997) an attorney

convicted after trial by jury of a federal felony of making false and fraudulent statements to Special Agents of the Federal Bureau of Investigation in violation of 18 USC § 1001 sought to "... surrender his license to practice law in the Commonwealth of Kentucky and to resign from the Kentucky Bar Association pursuant to [Kentucky Supreme Court Rule] 3.480 (3)." The Kentucky Supreme Court suspended LeMaster's bar license for 4 years under Kentucky Supreme Court Rule 3.510. Reinstatement in case of disciplinary suspension.

In *Matter of B.J.Roberts* 259 Ga. 267, 380 S.E.2d 51 (Ga.1989) an attorney convicted on two federal felony counts of submitting false statements in violation of 18 USC § 1001 and 1002 who petitioned for "voluntary surrender of his license based on his conviction of a felony involving moral turpitude" was suspended from practice of law in the State of Georgia for the longer of three years or the period of time he is placed on probation for the crimes for which he was convicted of.

"Surrender" described the act of turning over a license in response to suspension, revocation, or disqualification under Fla. Stat. § 322.251 in *Rodgers v. State of Florida* 804

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So.2d 480, 2001 Fla. App. Lexis 17128, footnote 9 (4th Dist. 2001) (Case No. 4D00-396). "Surrender" of a driver's license following a "suspension" was ordered in *Canal Ins. Co. v. Reed* 680 So 2d 486, 1986 Fla. Lexis 3308 (1st Dist. Ct. of Appeal), and in *Cook v. Kirkman* 183 So.2d 280, 1996 Fla. App. Lexis 5531 (3d Dist. Ct. of Appeals 1966).

"Surrender" in the above described license discipline cases which the Amended Report ignored is not the equivalent of consent to disbarment or agreement not to participate in a disciplinary hearing. The Amended Report's disbarment recommendation based upon dictionary plain meaning definitions of "sacrifice" and "surrender" should not be accepted since "surrender" is used in license discipline cases to describe the relinquishment of a license in response to discipline which could be suspension, disbarment, or some other direction. More importantly, the Amended Report and Bar Counsel offer no case in which a court considered statements by the respondent to a sentencing court in a Florida or non-Florida criminal proceeding as the determinant of sanction in a Florida attorney license disciplinary proceeding. The Amended Report's determining sanction by considering respondent's comments to the New York criminal sentencing judge, and assigning a weight to those comments greater than that given to the consideration of aggravating and mitigating factors set forth in the *Florida Standards for Imposing Lawyer Sanctions* standard 9.2 and 9.3 appears to be unprecedented. The Amended Report's reliance on respondent's statements to the New York sentencing judge to determine sanction is particularly inapplicable and inappropriate in this case where the sentencing judge did not mention respondent's professional licenses as a basis for respondent's sentence or make disbarment in Florida a condition of respondent's sentence in the New York criminal case.

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POINT II

SUSPENSION WITH CONDITIONS IS THE APPROPRIATE SANCTION IN THIS CASE WHERE THE APPARENT CAUSE OF THE MISCONDUCT IS A

TREATABLE MEDICAL CONDITION FOR WHICH THE RESPONDENT IS RECEIVING TREATMENT

A. Medical and Emotional Condition Is Recognized as a Mitigating Factor in Attorney Discipline Cases

Treating and expert physician reports and expert testimony establish that respondent's inability to make an accurate assessment of his professional functioning during the disability benefit period was the symptom of an untreated and pre-existing medical condition. Since misreporting of professional functioning is the basis for the criminal prosecution from which this disciplinary proceeding arises, the respondent's medical condition is a significant mitigating factor. As described above the Amended Report indicates that but for respondent's comments just prior to sentencing Referee Reynolds would have recommended a suspension with conditions rather than disbarment.

Documented medical conditions similar to respondent's were sufficient to mitigate sanction in attorney discipline cases in states including Florida (*The Florida Bar v. Condon* 647 So. 2d 823 (Fla. 1994)), Louisiana *(Louisiana State Bar Ass'n v. Larre* 457 So. 2d 649 (La. 1984), South Carolina (*Matter of Howle* 294 S.C. 244, 363 S.E.2d 693 (S.C. 1988)), Arizona (*Matter of Hoover* 161 Ariz. 529, 779 P.2d 1268 (Az. 1989)), California (Frazer v. State Bar of California 43 Cal. 3d 564, 737 P.2d 1338 (Ca. 1987), Washington (*Discipline of McLendon* 120 Wash. 2d 761, 845 P.2d 1006 (Wa. 1993), and Nebraska (*Nebraska State Bar Ass'n v. Gleason* 248 Neb. 1003, 540 N.W. 2d 359 (Ne. 1995).

Respondent's belief that he could not function throughout the disability benefit period is the documented symptom of a pre-existing illness which is accepted as mitigation in attorney

disciplinary proceedings in Florida and other states. Respondent's receipt of disability

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benefits when long term conventional medical treatment was not working and respondent was beset by hopelessness, loss of confidence, a sense of impending doom, and belief he was nonfunctional is not as serious as misappropriation of over a million dollars from clients over a long time period - for which the respondent in *McClendon, supra* received a license suspension based upon his medical condition.

The Amended Report's alternative recommendation of license suspension with conditions is consistent with prevailing case authority, and is supported by application of the criteria for determining sanction set forth in *The Florida Bar Standards for Imposing Attorney Discipline*.

B. Suspension is Supported by Application of the Florida Bar Standards for Imposing Lawyer Discipline ("Florida Bar Standards").

1) Discipline in This Proceeding and Minor Discipline for Actions Remote In Time Are Not "Prior Discipline" Which Should Be Counted As An Aggravating Factor Under Florida Bar Standard 9.22(a)

The Amended Report V(B)(a)(1), page 11, holds respondent's interim suspension on consent in this proceeding is "prior discipline" and an aggravating factor *in this proceeding*. This Court's order dated March 1, 2004 in Case No. SC03-1644 (not the order dated December 11, 2003 as described in the Amended Report) entered upon respondent's

withdrawing his opposition suspended respondent nunc pro tunc to May 12, 2003, the date of respondent's New York felony conviction. Discipline *in this proceeding* is not "*prior discipline*" and should *not* be considered an aggravating factor.

The Amended Report V(B)(a)(2) and (3), pages 11 and 12, holds that consecutive discipline in New York (a New York Supreme Court Appellate Division Third Department order dated **June 22, 1995** censuring respondent for ***February 1994*** conduct including signing client names to a petition to extend preliminary letters testamentary in a probate matter and notarizing

* * *

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C. Suspension Is Supported Applying Mitigating Factors Recognized in Florida, Federal, and State Discipline Cases Involving Felony Convictions

1) Mitigating Factors in Florida Attorney Discipline Cases Involving Felonies Support Suspension

The Amended Report IV (B), page 9 correctly holds that "A respondent is entitled to submit mitigating evidence to overcome the presumption ... of disbarment as the sanction for an attorney convicted of a felony." *Florida Bar v. Jahn* 509 So.2d 285 (1987). The Amended Report's finding **eight** mitigating factors under Florida Bar Standard 9.32 is correct except for the failure to find that respondent's cooperation in the disciplinary process under Florida Bar Standard 9.32(e) to be a **ninth** mitigating factor. See discussion in Point II (B)(3), supra. The Amended Report cited no cases in support of its conclusion that but for respondent's statements to the New

York judge who sentenced respondent on May 12, 2003 the referee would have found that respondent's proof of medical conditions extant during the disability benefit period were sufficient to overcome the presumption of disbarment arising from respondent's felony conviction. Failure to provide authority in support of discipline recommendations is not viewed favorably by the Florida Supreme Court. See e.g., *Florida Bar v. Heptner* 887 So.2d 1036, 1041 (Fla. 2004).

The following Florida attorney disciplinary cases considered mental illness as a factor in mitigation of sanction: *Florida Bar v. Temmer* 753 So.2d 555 (Fla. 1999) which resulted in a 91 day suspension and 3 years probation with conditions; *Florida Bar v. Clement* 662 So.2d 690 (Fla. 1995) which resulted in disbarment; *Florida Bar v. Condon* 647 So.2d 823 (Fla. 1994) which resulted in a suspension of three years or until the conditions for reinstatement set forth in the Supreme Court order were satisfied; *Florida Bar v. Musleh* 453 So.2d 794 (Fla. 1984) which resulted in a 90 day license suspension, automatic reinstatement, and permanent probation; *Florida Bar v. Perri* 435 So. 2d 827 (Fla. 1983) which resulted in a 3 year suspension

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with reinstatement conditioned upon proof of rehabilitation; *Florida Bar v. Moran* 273 So.2d 379 (Fla. 1973) which resulted in a public reprimand and a three year probation conditioned on the filing of quarterly reports; and *Florida Bar v. Parsons* 238 So.2d 644 (Fla.1970) which resulted in a one year suspension and reinstatement upon making restitution, restoration to mental competence, and probationary supervision.

* * *